



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Steel & Shipbuilding Company

File: B-250305.2

Date: March 23, 1993

James G. Ehlers, Esq., Hillyer & Irwin, for the protester.
Peter B. Jones, Esq., Jones & Donovan, for Southwest Marine, Inc., an interested party.
Samuel J. Galbo, Jr., Esq., and Keith M. Dunn, Esq., Department of the Navy, for the agency.
Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably downgraded protester's proposal where, during discussions, agency expressly requested protester to provide skill level information regarding the personnel on which its proposal was based and protester failed to disclose that information.
2. Agency reasonably applied offerors' proposed labor and overhead rates to agency's manhour estimate where agency's total manhour estimate differed only slightly from the offerors' manhour estimates and agency reasonably determined, on the basis of input from the Defense Contract Audit Agency and from the offerors during discussions, that the offerors' proposed rates were unlikely to be affected by minor variations in manhour requirements.
3. Allegation that agency failed to follow its source selection plan with regard to when evaluation weighting factors were established does not state a valid basis for protest.

DECISION

National Steel & Shipbuilding Company (NASSCO) protests the Department of the Navy's award of a contract to Southwest Marine, Inc. (SWM) under request for proposals

(RFP) No. N00024-92-R-2802 for "post shakedown availabilities" (PSA) of two CG 47 Class Aegis Cruisers and two DDG 51 Class Destroyers.¹ NASSCO protests that: the agency improperly downgraded NASSCO's technical/management proposal and failed to conduct meaningful discussions; the agency's evaluation of cost proposals was flawed; and the agency failed to timely assign evaluation weights to cost and technical/management factors as contemplated by the source selection plan.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation was issued on December 13, 1991, and, as amended, sought submission of initial proposals by February 28. The solicitation stated that award would be based on cost and technical/management factors and that technical/management factors would be significantly more important than cost. The RFP provided for evaluation of technical/management proposals in the following areas: (A) facilities/production capabilities; (B) program management; (C) quality assurance; (D) material procurement; and (E) test and trials.² With regard to the most important evaluation factor, facilities/production capabilities, Section L of the solicitation required offerors to submit a manpower chart, describing the information sought as follows:

"Provide a production organization manpower loading chart depicting proposed manning from start of availability to completion. This chart should provide information for [work to be performed on each of the four ships] as well as all other firm and anticipated shipyard work. It should include a breakdown by Navy programs and other work, showing numbers and skill levels anticipated to be required"

¹The term "post shakedown availability" refers to repairs and modifications to a newly constructed ship that are found to be necessary following delivery of the ship to the Navy and a brief period of operation at sea.

²The RFP stated that factor A was significantly more important than factor B and that factors B, C, D, and E were listed in descending order of importance, except that factors C and D were of equal importance.

In addition, Section L of the RFP contained the following table advising offerors, on the basis of the Navy's past experience on similar PSA projects, of the projected makeup of the workforce likely to be necessary:³

| <u>CRAFT/TRADE</u> | <u>PERCENTAGE OF WORKFORCE</u> |
|-----------------------|------------------------------------|
| Shipfitters | 24 |
| Machinists | 13 |
| Firewatch/Safety | 11 |
| Electrical/Electronic | 11 |
| Pipefitters | 11 |
| Painters/Blasters | 10 |
| Riggers | 10 |
| Sheetmetal | 7 |
| Carpenters | <u>3</u> |
| TOTAL | 100 |

The RFP also provided that cost proposals would be evaluated on the basis of realism and projected cost to the government stating:

"An analysis of the realism and completeness of the cost quotation will be performed on each proposal, including the trackability of the costs to the offerors technical proposal, and the proposed allocation of manhours and labor mix. Based on such analysis, a recommended cost will be determined

Projected cost to the Government will be calculated by adding for each offeror the Navy's recommended cost and the offeror's proposed fee"

Both NASSCO and SWM submitted proposals by the February 28 closing date. Evaluation of technical/management proposals was performed by a technical evaluation review panel (TERP); evaluation of cost proposals was performed by the contracting officer's representative (COR). The COR and TERP submitted cost and technical/management evaluation reports to a contract award review panel (CARP) on April 15 and June 8, respectively. After reviewing the reports, the

³The RFP further provided the government's estimate of the total manhours that would be required for each PSA work package, stating that an offeror could use its own manhour estimates if it provided a detailed rationale for its assumptions.

CARP recommended that discussions be conducted with both offerors. On June 18, discussions were initiated by providing written questions to each offeror concerning deficiencies or weaknesses in their respective proposals.⁴

NASSCO's initial proposal contained a manpower chart that was broken down by craft/trade, but not by skill level within the crafts/trades.⁵ As indicated above, Section L of the RFP contemplated that proposals would contain information regarding the makeup of the offerors' proposed workforces, broken down by craft/trade, and also information regarding the skill levels of the proposed personnel. After reviewing NASSCO's initial proposal, which contained only craft/trade information, the agency asked NASSCO the following discussion question:

"4. Provide a breakdown by skill level of personnel projected to meet production organization requirements for each PSA. Provide indication as to whether skill levels are projected to be adequate and, if not, update NASSCO's hiring plan to reflect the numbers of new hires by skill level."

In response, NASSCO again submitted a breakdown of its proposed workforce by craft/trade, but did not disclose skill levels within crafts/trades.⁶

⁴On the same day, the contracting officer requested pre-award surveys for both offerors and sought Defense Contract Audit Agency (DCAA) audits in conjunction with those surveys. As part of the pre-award surveys, DCAA identified various deficiencies in each offeror's accounting system. Each offeror was advised of the deficiencies relating to their respective systems, represented that the deficiencies would be corrected, and formalized their representations by submitting a document labeled "Attachment T" as part of their proposals.

⁵In its protest, NASSCO explains that "technically, the . . . term [skill level] refers to degree of proficiency in one's trade (journeyman vs. helper)," and "the . . . term [craft/trade] refers to types of skills (welder, machinist, carpenter)."

⁶In its initial proposal, NASSCO had provided a craft/trade breakdown of its total workforce. NASSCO's response to the discussion question provided a craft/trade breakdown by ship.

The agency's final evaluation concluded that NASSCO's technical/management proposal contained a weakness regarding its proposed workforce. Overall, NASSCO's technical/management proposal was rated slightly superior to SWM's technical/management proposal, but SWM's evaluated cost was lower than NASSCO's evaluated cost. The CARP reviewed the final evaluation reports, concurred in the technical/management ratings and cost evaluations, considered the applicable weighting factors,⁷ and concluded that NASSCO's slightly superior technical/management proposal did not warrant its higher cost; based on that determination, the CARP recommended awarding a contract to SWM. The source selection official concurred with the recommendation and awarded a contract to SWM on August 28. This protest followed.

DISCUSSION

NASSCO first protests that the agency's assessment of a weakness in its technical/management proposal because of NASSCO's failure to disclose the skill levels of its proposed personnel was unreasonable and demonstrated that the agency failed to conduct meaningful discussions. NASSCO asserts that it reasonably interpreted the RFP and the agency's discussion questions as seeking only a workforce breakdown with regard to crafts/trades, and that if the agency desired a further breakdown by skill level, it failed to meaningfully communicate that requirement to NASSCO.

Specifically, NASSCO asserts that the terms "skill level" and "craft/trade" are often used interchangeably and, therefore, that it understood the agency's request that it "provide a breakdown by skill level" to be seeking further information regarding the craft/trade breakdown of the workforce it proposed. NASSCO maintains that its interpretation was reasonable because "it would make absolutely no sense [for the agency] to ask for skill levels (meaning proficiency) without asking for trade/craft information (meaning types of skills)."⁸

⁷The agency had determined that technical/management factors were to be given a weight of 60 percent and cost was to be given a weight of 40 percent.

⁸NASSCO also complains that it has submitted only craft/trade information in various other proposals responding to solicitations seeking "skill level" information, and asserts that its proposals have never been downgraded. However, the proper evaluation of a proposal depends on the facts and circumstances of each

NASSCO's assertion that it was misled regarding the type of information sought is not persuasive. As noted above, in its protest, NASSCO expressly acknowledged that "technically, the . . . term [skill level] refers to degree of proficiency in one's trade (journeyman vs. helper)," and "the . . . term [craft/trade] refers to types of skills (welder, machinist, carpenter)." Since both the RFP and the agency's discussion questions sought information regarding "skill levels," the plain meaning of the agency's requests was that NASSCO should provide information relating to the proficiency levels, within crafts/trades, of the personnel it was proposing--the very information that NASSCO declined to provide, the omission of which provided the basis for the agency to downgrade NASSCO's proposal.

NASSCO's argument that "it would make absolutely no sense to ask for skill levels . . . without asking for craft/trade information," does not support its purported understanding of the agency's question. We think it clear that offerors, including NASSCO, understood the RFP to be seeking craft/trade information; NASSCO's initial proposal, in fact, provided a craft/trade breakdown of its workforce. In this context, the agency's request during discussions that NASSCO "provide a breakdown by skill level," could only have been reasonably interpreted as seeking a further breakdown, by skill level, of the information NASSCO had already provided.

NASSCO next protests that the agency's evaluation of cost proposals was unreasonable. NASSCO notes that, in conducting its cost realism analysis, the agency applied each offeror's proposed labor and overhead rates to the government's manhour estimate. NASSCO states that its proposed composite rates per line item were "a reflection of the company's capital investment in equipment, its labor charge accounting practices, efficiency, learning curve, and so forth," and argues that application of proposed rates to any level of effort other than that proposed by the offerors resulted in a flawed cost realism analysis.

The agency points out that the overall adjustment to the manhour estimates of both offerors was minimal; specifically, the agency's total manhour estimate was approximately 5 percent higher than the total manhour estimate on which NASSCO's proposal was based, and less than 1 percent lower than the manhour estimate on which SWM's

particular procurement, not on those of prior procurements. Alfa-Laval, Inc., B-221620, May 15, 1986, 86-1 CPD ¶ 464. The fact that an agency may previously have improperly evaluated a proposal in a different procurement does not justify repetition of that mistake. Wright Assocs., Inc., B-238756, June 12, 1990, 90-1 CPD ¶ 549.

proposal was based. Further, the agency states that, before applying the offerors' rates to the agency's manhour estimate, the agency spent considerable time and resources reviewing the bases for the proposed rates. Specifically, the agency requested and received reports from DCAA and, during discussions with the offerors, probed their respective bases for the rates proposed. The agency notes that neither offeror provided any information demonstrating that its rates were based on unique factors which would cause them to fluctuate if applied to a slightly different level of effort. Accordingly, the agency asserts that its application of each offeror's proposed rates to the agency's manhour estimate was reasonable.

Where, as here, an agency evaluates proposals for award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make the cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. AmerInd, Inc., B-248324, Aug. 6, 1992, 92-2 CPD ¶ 85.

Here, there was only a minor variation between the government's manhour estimate and those on which the offerors based their proposed rates. NASSCO has merely made general representations regarding the effect that a variation in manhour estimates will have on the rates proposed by each offeror, and has offered no specific evidence or discussion regarding the particular effect that the variation in manhours involved here will have on either its own rates or on those of SWM. In this regard, after specifically considering the bases for the offerors' respective rates, the agency concluded their rates were not based on unique factors that would cause the actual rates experienced to fluctuate if applied to a slightly adjusted level of effort. On this record, we have no basis to question the agency's cost realism analysis.

Following its receipt of the agency report, NASSCO filed a supplemental protest based on information obtained from that report. In its supplemental protest, NASSCO notes that the source selection plan for this procurement contemplated that the evaluation weights to be applied to cost and technical/management factors would be established before the RFP was issued. NASSCO observes that, in fact,

documentation establishing the evaluation weights to be applied was not completed until 12 days after initial proposals had been submitted. On these facts, NASSCO states that it is "mak[ing] no allegation of bad faith or misconduct," but is "basing [this portion of] its protest on the fact that this action [failure to establish evaluation weights until after proposals were submitted] violated the terms of the agency's source selection plan" and was "contrary to the fundamentals of fairness and impartial evaluation."

The agency has submitted an affidavit from the agency official who was responsible for establishing the evaluation weights in this procurement. In that affidavit the agency official states that, during an acquisition meeting prior to issuance of this RFP, he determined that cost and technical/management factors would be weighted at 40 and 60 percent, respectively, and that this determination was based on the successful use of those weights in another PSA procurement he had previously conducted. The affidavit further states that, due to an oversight, the weight determination was not reduced to writing until a few days after proposals were submitted, but that none of the agency evaluators played any role in establishing the applicable weights.


Allegations of deviations from an agency's source selection plan do not constitute a basis for questioning the validity of an award selection. Rather, source selection plans are internal agency instructions and, as such, do not give outside parties any rights. Robert E. Derecktor of Rhode Island, Inc., et al., B-211922 et al., Feb. 2, 1984, 84-1 CPD ¶ 140. Here, as noted above, the RFP itself specifically advised offerors regarding the relative weights that would be applied to the evaluation factors; specifically, the RFP stated, "Category I (Technical/Management) is significantly more important than Category II (Cost)." Clearly, the agency's assignment of weights was restricted by this parameter within the RFP and, in fact, the weights actually assigned (technical/management, 60 percent; cost, 40 percent) are consistent with that limitation. Thus, to the extent NASSCO's protest is based on the agency's failure to follow its source selection plan, it fails to state a basis for protest. Further, by NASSCO's own admission, there is no indication of bad faith or misconduct related to the agency's establishment of weighting factors, nor is there anything in the record which suggests that any aspect of the alleged deficiency had an adverse impact on NASSCO.

Finally, in its initial protest, NASSCO asserted that SWM's proposal should have been rejected for failing to consider overtime; that SWM's proposed fee structure was improper;

and that the agency's consideration of "Attachment T" in its source selection was improper." In its report responding to NASSCO's protest, the agency fully addressed each of these issues. In its comments responding to the agency report, NASSCO expressly acknowledged that SWM's proposal properly considered overtime, and did not further address SWM's allegedly improper fee structure or the agency's consideration of "Attachment T."

Where an agency specifically addresses an issue raised by the protester in its initial protest and the protester fails to rebut the agency's response, we consider the protester to have abandoned the issue. Mitchell Constr. Co., Inc., B-245884; B-245884.2, Jan. 17, 1992, 92-1 CPD ¶ 92. Since NASSCO did not rebut the agency report regarding SWM's fee structure or the agency's consideration of "Attachment T," we consider NASSCO to have abandoned those issues.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel

"Regarding "Attachment T," NASSCO's statements are contradictory. Although it specifically stated that, "NASSCO has no objection to this attachment in this procurement and does not believe it is a basis for protest," it referred to the use of this document as a "conditional issue" since it knew that a similar document was being challenged by another protester in a different procurement.